

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SIMPSON STRONG-TIE COMPANY
INC.,

Plaintiff,

v.

MITEK INC.,

Defendant.

Case No. [20-cv-06957-VKD](#)

**ORDER RE PLAINTIFF'S
ADMINISTRATIVE MOTION RE
RABENBERG TESTIMONY**

Re: Dkt. No. 145

Plaintiff Simpson Strong-Tie Inc. (“Simpson”) objects to defendant MiTek, Inc.’s (“MiTek”) belated deposition designations of potential witness Keith Rabenberg. Dkt. No. 145.

In its January 19, 2023 pretrial submissions, MiTek identified Mr. Rabenberg as a “may call” witness who would testify live, and it did not provide deposition designations for him. Dkt. No. 125 at 12. However, on January 30, 2023, MiTek provided supplemental deposition designations that included designations for Mr. Rabenberg. Dkt. No. 145 at 2. Simpson objects to Mr. Rabenberg testifying by deposition. *Id.* at 3.

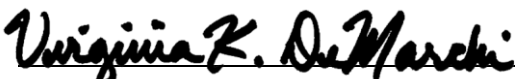
MiTek responds that if it chooses to call Mr. Rabenberg, the witness will testify live. Dkt. No. 149. However, because MiTek anticipates that it might be more efficient to present Mr. Rabenberg’s testimony by deposition, it says it is prepared to present the designated deposition testimony instead, but only if Simpson agrees. *Id.* at 3.

There is no dispute for the Court to resolve. If MiTek chooses to call Mr. Rabenberg, he will testify live unless Simpson agrees that his testimony may be presented by deposition. And if Simpson does so agree, it will have the opportunity to provide objections and counter-designations

1 at that time.

2 **IT IS SO ORDERED.**

3 Dated: February 3, 2023

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6 VIRGINIA K. DEMARCHI
7 United States Magistrate Judge
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United States District Court
Northern District of California